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Hemsisia, March 18th, 18th

BROWN & CO.

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HOLLISTER & Co. TOR JOB WORK EXECUTED IN Dawaiian Gazette.

WEDNESDAY, JUNE 17 1885

ceme Court of the Hawaiian Islands In Banco April Term 1885. KIONA VS. THE KOHALA SPRAN COMPANY Indd C. J., McCally J. and Andin J. Opin

n below, for a statement of the esser sets of this case.

For reasons which will appear later we d

of think it necessary to decide whether the We think the rights of the parties in the case are to be determined by the instrumen-dated May 6, 1882, and called a "surrender."

dated May 6, 1882, and called a "aurrender."
It was an agreement made in settlement of an action of ejectment brought by defendant against plaintiff for the possession of the premises in controversy. It recites that "whereas the said party of the second part has cummenced a suit in ejectment against the said party of the first part to eject him from certain premises at said Kolada, the property of said party of the first part, which said premises are claimed by said party of the first part by tirs. party of the first part, which had promises are claimed by said party of the first part by vir-ture of a lease made to him by Henry Johnson, as manager of the Kohala Plantation, the rul-dity of which leave is threated by said party of the second part; now therefore, the said party of the first part in consideration of the discontinuance and withdrawal of said suit, doth nereby surrender the said lease and relinquish all claim to said premises or dray part thereof

plaintiff, the Kohala Segar Company in and to the premises and that he, said party of the list part is tenant at will only of the same nd at any time and all times on ten days no-ce to quit shall and will quit and surrender essession thereof to the said party of the seccond part and will on demand pay up all ar-rears of rent and thereafter make payment of rent from time to time as demanded." of rest from time to time as demanded.

It seems to us that the above instrument released the Kohola Sugar Company from its
obligation to pay for the building erected by
Atoma. That right mose, if at all, from the
Johnson least, for it was the only contract
existing between them. The suit in ejectment was brought since the corporation maintained that it was not bound by the Johnson lease. If it was brought because the rest had no een paid, as Mr. Chapin says, it is unlikely bey would have allowed Akiena to remain on the land as a tenant at will paying the same rent! We think the effect of the whole testi-mony is that the object of the suit was to test

the liability of the corporation on the Johnson drawal of the suit, not only "surrenders the lease" but relinquishes all claim to the prem-ises on which stood the house which he had built and therefore the house itself "by reareace, and he reiniquished it to be company as effectually as he relinquished his claim to possession of the land for the three months remaining of the unexpired term. We gather this intent of Akiona from the whole instru-

We think that the effect of this instrument was to create new relations between the par-ties and cancelled all claims which Akitma lane in a deed of release, they shall be taken might have had by reason of the Johnson lease. Otherwise why should the corporation have discontinued its suit? The Johnson be qualified by the particular recital." have discontinued its suit. The language of the release was, "we do sentatives there. There is no eviden be that the only consideration moving to the cach hereby acquit and discharge the said that Kasi senior ever claimed an interest corporation was the recognition by Akiona Eleazer Clark from all demands we have in this land from Mahuka, nor did Simonal description of the recognition by Akiona Eleazer Clark from all demands we have in this land from Mahuka, nor did Simonal description of the release was, "we do sentatives there. There is no eviden that Kasi senior ever claimed an interest composition was the recognition by Akiona and the recognition of the release was, "we do sentatives there. There is no eviden that Kasi senior ever claimed an interest composition was the recognition by Akiona and the r corporation was the recognition by Akiona that his tenancy for the next three menths was at will, paying the same rent. We think it is a fair inference from the surrender, that Akiona thought he could not hold the company bound by the Johnson lease or he would not have consented to relimpuish his rights under it. It is unphilosophical to say in the face of the surrender of the lease signed by Akiona which recites that the company disputed the validity of that lease, that it left in puted the validity of that lease, that it left in Akiona which recites that the company disputed the validity of that lease, that it left in
ferce and effect an important and valuable
covenant moving to Akiona from the company.

We think that Akiona should be held to be
where his written deed places him—a tenant
at will of the company subject to tes days nolike.

See als: Moore vs. McGrath, Cowpers, R., p.

y. H. E. II. Ruth Kedikoloni vs. Commission—
Hoonulan bounded Waikiki side by K
ers Crown Lands; Whallon vs. Kaufimana, 19
Like, 27, Lackson vs. Stackbangs, 1 Cow, 121
Like, 27, Lackson vs. Stackbangs, 1 Cow, 122
Like, 27, Lackson vs. Stackbangs, 1 Cow, 122
Like, 27, Lackson vs. Stackbangs, 1 Cow, 123
Like, 27, Lackson vs. Stackbangs, 1 Cow, 124
Like, 27, Lackson vs. Stackbangs, 2 Cow, 124
Like, 27, Lackson vs. Stackb

The judgment below should be reversed and judgment new entered for the defendant.

ration books were there kept. Necessarily the practical business and working of the planta-tion was left in the hands of the manager The multifarious and extensive duties thereby devolving upon such an officer are well known. Doubtless Henry Johnson, as such manager, was the general agent of the company. Story on Agency, Sections 17, 53. The premises in question, prior to the three years' lease thereof, executed by Johnson to the plaintiff, had been occupied as a leasehold

at \$12 a month, the same rent as that agreed to be paid by said three years' lease. Yearly eports of rents received at the plantation, in uding rents from Akiona, but not maining ito, were sent to the corporation officers. The and let was small; the interests involved in he lease were unimportant for such a cor sany, and were not unusual. I think Johns ected within the apparent scope of his author-ty, and that the lease was binding in favor of he plaintiff who had no notice of any by-law

equiring the signature of the President and ecretary to written documents. I refer to Crowley vs. Genesce Mining Co., 55 Cal., p. 273, where an important mining contract was executed by the President and Manager of a mining corporation, whose company office was in San Francisco, far away. See also Story on Agency, Sec. 53. In that case the plaintiff recovered. The right to recover all that the plaintiff asks here, can also be sustained as of the nature

of an estoppel in pais.

"If a man supposing he has an absolute title to an estate, should build upon the land with the knowledge of the real owner, who should stand by and suffer the croction to proceed without giving any notice of his own claim, he would not be permitted to avail kineself of

pensation therefor,"

1 Stery's Eq. Jur. Sec. 388.
The act of Johnson, who was in charge of the property of the corporation, in permitting Akiona to erect a house or the land even though this might be in excess of his authority as manager of the plantation, was of such a character as would authorize the plaintiff, ignorant of the by-lapt, to believe that he had such authority, and the corporation would be

also must have known it.

I do not here argue the question of ratification, by acceptance of rent, though strong. It would seem that the local directors knew or ought to have known of its payment. But the act of Johnson was more than a silent acquicescence, it was a positive written permission to make the erection, and if invalid was a fraud by which the company was eatopped. See Smith's Leading Cases cited in opinion below; Story's Eq. Jur., Sec. 387.

If these views are correct, on the 6th of May, 1882, the plaintiff was in possession of a valid leasehold which would expire on August

leased two years before.

An active of ejectment by defendant against plaintiff for the land leased, was then pending at Hilo, and by a paper then executed at Hilo between the parties, the defendant claims that the plaintiff released the demand in suit.

The paper is as follows:

"This indenture, made this 6th day of May, 1882, by and between Akiona, (Ch.) of Kohala, Island of Hawaii, of the first part, and the Kohala Sugar Company, a carporation duly crosted and existing, under and by vir the of the laws of the Hawaiian Islands, of the second part, withenseth:

That whereas the said party of the second part has commenced a suit in ejectment against the said party of the first part, to eject him from certain premises at said Kohala, the

of which it is proposed to apply the release, that it was so intended to be limited by the parties. And for the purpose of ascertaining that intent every part of the instrument is to be considered." The release in this case was from plaintiff and others as general creditors severally, o John Erskine, Jr., and Mudiaon D. Erskine

who assigned property to pay their debts. The plaintiff besides held notes secured by a mortgage on property assigned which were not specially secured by the assignment. The plaintiff takes on interest under the assignment and executes, with the other creditors, a skine of and from all and singular their several debts and demands against them of every name and nature." name and nature."

The Court held the mortgage and notes not

action of ejectment,
In witness whereof the said parties hereto

In Rich vs. Lord, 18 Pick. 332-5-7, heard in 1836, Shaw C. J. says:

"It is now a general rule in construing releases, especially where the same instrument is to be executed by various persons, standing in various relations, and having various kinds of claims and demands against the releasee, that general words, though the most broad and comprehensive, are to be limited to parti-

and comprehensive, are to be limited to parti-cular demands, where it manifestly appears, by the recital, by the nature and circum-

stances of the several demands, to one or mor

In Lyman Judge vs. Clark et al, 9 Mass. 231-8, decided in 1812, where the consider-ation of the release was 825 and the additional sum sought to be released was fifty pounds secured by will of Caleb Clark, the Court

"The words used in this release ought not son of the lease or by reason of any right or claim arising therout or therefrom. The right he claimed that the company should pay for this house was a right arising from the lease, and he relinquished it to the company parties, which they never intended or contem-plated. The whole instrument is to be taken general and reasonable rule that more general words in an instrument shall be restrained by other expressions more limited in the same in-strument." And at p. 237 the Court quotes And at p. 237 the Court quotes from Bacon's Abridgement, as follows:
"That where there are general words all

general words follow, the general words shall be qualified by the particular recital." The language of the release was, "we do

or may have on him by virtue of said Caleb's last will." The Court held this me release of the fifty istrator and told the widow that he had a

tice.

But it is clear from the testimony that the company gave him the privilege of removing his building.

He had abusedant time in which to do this By all the authorities a tenant who has a right to remove his fixtures near do selecter be quits possession.

Alona cannot claim that he had not a reasonable time for he stipulated that he would

Had that suit succeeded, as I and the bounds are the same as those des edefendant could at most have cribed. (Claimant admits his brother Kan ejectment suit. Had that out successes, us 1 have shown, the defendant could at most have quit. We find no evidence that he attempted to move his building. Failing to exercise this privilege before his interest in the land expired he could not do so afterwards, because the right to possess the land and the fixtures the right to possess the land and the fixtures that building the building the building that the lease had but three months and three days to run. The plaintiff for his surroulet of it received. as a part of the realty vested immediately in the landlord.

The plaintiff for his surrender of it received what might be considered by him nearly or quite as valuable—an indefinite extension of is possession, at the same reut at will, on ten ays' notice to quit. He received nothing more. and judgment now entered for the elected and adays' notice to quit. He same real at will, on ten days' notice to quit. He same real at will, on ten days' notice to quit. He same real at will, on ten defendant.

Honolula, May 26, 1885.

Dissenting office of the corporation was the acting manager in charge of the defendant, owning a large sugar plantation, consisting of a mill for the manufacture of sugar, and many hundreds of acres of land situated at Kohala, Island of Hawaii. The office of the corporation was as at Henolula, Island of Oaha. Books of account were kept at the plantation, but its leading officers, including its President, Treasurer and Secretary resided at Honolula, and the corporation books were there kept. Necessarily the show that the parties did not intend the sar-render or release of the claim in suit. Their minds did not meet on that point. The object of the paper was the surrender of possession of the premises and the substitution therefor f the tenancy at will. And the words "reinquish all claim to said premises or any part
lacroof by reason of the said lease." followed
by the general words, "r by reason of any
ight or claim arising thereout or therefrom,
and doth hereby admit all of the claim of the
land doth bereby admit all of the claim of the
land the Fabrus Swart Company, in and the tenancy at will. And the words "re

> which by the terms of the new tenancy it was evident nobody contemplated to be enforced before the expiration of the tenancy at will. For these reasons I dissent resp be opinion of the majority of the Court. BENS. H. AUSTIN, Justice Supreme Court. Honolulu, May 26, 1885.

Supreme Court of the Hawaiian Islands In Banco April Term 1885

LONG AND KALAUKOA, BY THEIR GUARDIANS J. K. NAIHE AND KALAI VS. M. PHILLIPS & Co., AKINA, KALAI, AHI, KAINAPAU

Judd C. J. McCally J. Austin J. Opinion of the Court per Judi C. J.

This is an action of ejectment to recover ossession of a parcel of land at Niulii, Kohaand by and suffer the erection to proceed ithout giving any notice of his own claim, he consisting of oleven acres and onld not be permitted to avail himself of anothin the provided the process of the constitution of the process of on, numbered 1338. The jury was waived and the Chief Justice, bolding the January Term, 1885, gave judgment for the plaintiffs, to which exception was taken.

Akiona to erect a house or the land even though this might be in excess of his authority as manager of the plantation, was of such a character as would authorize the plaintiff, ignorant of the by-law, to believe that he had such authority, and the corporation would be estepped to say that it did not know that the house had been put up. The local directors also must have known it.

I do not here argue the question of ratification, by acceptance of rent, though strong. It would seem that the local directors know or ought to have known of its payment. But the act of Johnson was more than a silent acquisescence; it was a positive written permission to make the ercetion, and if invalid was a fraud by which the company was estopped.

fraud by which the company was estopped. See Smith's Leading Cases cited in opinion below; Story's Eq. Jur., Sec. 387.

If these views are cerrect, on the 6th of Mar, 1882, the plaintiff was in possession of a valid leasehold which would expire on August 9, 1882, at \$12 a month rent. He was also the owner of an unquestionable claim against the defendant here, in suit for \$1,000, the value of the new building he had erected on the land leased two years before.

An active of ejectment by defendant against plaintiff for the land leased, was then pending.

At the trial it was shown that the purchasers.

At the trial it was shown that the purchasers.

contained in the mortgage and the defendants M. Phillps & Co. became the purchasers.

At the trial it was shown that the patentice Kupamapa died in 1848 or thereabouts leaving no widow nor issue. He had brothers Kaimaliauma and Kapahi and sisters Kawahis and Kabookaliki. None of these left any issue except Kahookaliki, who had by her hurshand Kalatkoa, a son Kuhaiki now decreased, the father, by Kalat (#,) of the minor plaintiffs. As grand-nice and nephew of the patentee Kupamapan they stand in an inheriting felation. But it is arged that Koko, wife of Kapahi, survived him and so her interest is outslanding and the plaintiffs ought not to recover more than they have shown title to.

But the defendants, Phillips & Co, stand in the places of Keawe who voluntarily surran-

property of said party of the second part, which said premises are claimed by said party of the first part, by wirtue of a lease made to him by Henry Johnson, as manager of the Kohala Planiation, the validity of which lease is denied by said party of the second part; now the wards of Keawe. See Perry on Trusts to the cast of the second part; now

denied by said party of the second part; now therefore,

The said party of the first part, in consideration of the discontinuance and withdrawal of said sait, doth hereby surrender the said lease and relinquish all claim to said premises, or any part thereof by reason of the said lease, or by reason of any right or claim arising thereout or therefore; and sloth hereby admit all of the claim of the plaintiffs the Kohala Sugar Company in and to said premises and that the said party of the first part is tenant at will only of the same, and at any and all times that the said party of the lirst part is tenant at will only of the same, and at any and all times on ten days notice to quit, shall and will quit and surrender possession thereof to the said party of the second part and will en demand pay up all arrears of rent and thereafter make payment of rent from time to time as demanded.

And the said party of the second part in consideration of the aforesaid doth hereby them.

And the said party of the second part in consideration of the aforesaid doth hereby agree to discontinue and with Iraw the said We think the judgment below was correct Exceptions overruled. Kinney and Peterson for plaintiffs; R. F. Bickerton and A. Rosa for defendants, M. have caused the due execution thereof by the attachment hereto of the corporate seal of said company, and the several hands and scale of

Phillips & Co. Honolulu, May 26, 1885. said party of the first part, and names and scale of the President and Treasurer of said corporation." Supreme Court of the Hawaiian Islands In Equity. In Rich vs. Lord, 18 Pick, 322-5 7, heard BECKY K. KAAI VS. W. M. MAHUKA ET. AL.

> Opinion of Chancellor Judd. This is a bill in equity to declare a trust. It appears that in 1847, one Mathuselah Mahuka petitioned the Land Commission for an award to him of a house lot in Ho nolulu lying between King and Merchant streets east of Fort street. The Comm sion took evidence and awarded the la to him by award No. 721. The heading of and is awarded to "Mahuka."

In 1849 the land was appraised to asce tain the amount to be paid in commutation of the Government rights therein. The written report of the appraisers designates the land as "Mahuka's house lot." A Resolution of the Privy Council of that your is produced fixing the Government commutation at \$50, speaking of the land as Mahuka's; and on the 20th of November, 1849, the King signed a Royal Patent for this lot to Mahuka his he It is in evidence that Mahuka used it a

residence, having several houses upon and later bought the adjoining which was a large house and he then three the two places into one and continued to use the lot as a residence. He died in 1881 and the defendant is his son and heir. It also appears that Mahuka had a brother named Kaai who died in 1859 and left a son named Simon K. Kaai who died in 1851 leaving the plaintiff. in 1884, leaving the plaintiff, his widow and sole devisee. It is in evidence tha Kaai senior came from Waikapu and lived on this lot for a few years with his brothe marties, which they never intended or contemblated. The whole instrument is to be taken logether, and not divided into parts. It is a general and reasonable rule that more general words in an instrument shall be restrained by other expressions more limited in the same instrument." And at p. 237 the Court quotes was under jailer. After this he remove to Kona, Hawaii, and the latter part of life was spent at his residence at Kapali ma. While a member of the Legistatur in 1874-6 he lived, while the sess on the premises in question and was a customed to entertain his fellow Repr

claim it during Mahuka's life time. Afte Mahuka's death he was appointed admin In McIntyre vs. Williamson, 1 Edro., Ch. B. p. 347-8, decided in New York in 1831, where a mortrage. a mortgage. There was introduced in evidence cor trary to the objections of counsel for defendant the evidence before the Land

Hoomeapule sworn. This place is in Honolulu bounded Waikiki side by Kalan

was a court of competent jurisdiction and that the evidence upon which this judg ment was based cannot be introduced to controvert their judgment. Soon after the dissolution of this Commission, the Su

ing the twenty five years that have elapsed since the date of that decision all the members of the Commission have died and the reasons grow stronger from day to day why the awards of the Land Com-mission should be treated as final. One thing is clear, the land was awarded in the body of the award to Mahuka alone.

plaintiffs, the Kohala Sugar Company, in and to said premises, and that the said party of the first part is only tenant at will of the same, cannot be construed to cut off, without compensation, the plaintiff's claim in this action at the plaintiff's claim in this action at the plaintiff's claim in this action. mission shows that Kaai senior, his broth er, had, if he chose to insist upon it, a right to have his name inserted in the award as a tenant in common with his brother Mahuka, is not sufficient to raise a trust in Mahuka for him. He may have, for all we know, relinquished his claim by an unrecorded deed now lost. It is to be presumed that he was aware of the award to Mahuka alone and that he consented to it His whole conduct and that of his son an heir Simon is in accord with this view.
The occasional use of this lot as a residence
by Simon is fully accounted for in my
opinion by the relationship of nephew
which he sustained to Mahuka and which ong Hawaiians would weigh for a grea

The heading of the award is to Mahuka and Kaai, but it is a mere heading and the tenor of the award throughout contradicts

On a careful review of the case, I think the bill should be dismissed. S.B. Dole for plaintiff; E. Preston for defendant. Honolulu, April 24, 1885.

General Advertisements.

T. Waterhouse INVITESTINSPECTION OF THE

Following Goods Just Received EX LATE ARRIVALNO

Black French Merinos,

Ladies' & Gent's Underwear, Woolen & Cotton Shirts, LARGE ASSO MENT OF White Linen Shirts and Collars,

LATEST STYLES;

Ford Bress Goods, Ladies' Hats, trimmed and natrimered; Ostrick Feath Edgings and Insertions

A FINE LOT OF Home - Made Mince Meat SCOTCH TWEEDS, New Designed Prints,

F. HORN. English and Ameican Goods Practicel Confectioner & Part FELDERICAL STAND, IN HOTEL ST.
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Arrival of the Iron Ships "Ophelia," "Bordeaux," and "Clan Grant."

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Mixed Flannel A LARGE ASST. OF DRESS GOODS, SILRS, Satins, Silk Ribbons, Velyet, Union and Cotton Listados, Linen and Cotton Handkerchiefs, White and Colored Shirts, Merino Undershirts and Drawers, Ladies Underswear, Linua and Cotton Towels, All qualities and styles; Yictoria Lawiss, White Moleckin, Check Moleskin, Inst. Lace Edgings and Insertions, Brooky '20, yds, Spool Cotton, Contact 400 yds. Spool Cotten, Ticking, Eline Denius, Mosquito Netting, 20 inch:

Rubber Coats & Leggings 7 Bed Blankets. . All Sizes. Weights, Qualities and Colors;

Velvet & Tapestry, Rugs and Mats, A FEW OF THE NEW STYLE CENTRE RUGS

Merchant Canvas BAGS.

We make this one of our Specialties and have a Full Stock of Sugar, Rice & Coal Bags 8 & 5 ply Twine ENGLISH, HAWAHAN, AND AMERICAN FLAGS, FLOOR OILCLOTHS Extra Heavy, Assorted Widths:

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Iron Bedsteads, Galvanized Buckets. Tea Kettles & Sauce Pans

Assorted Sizes; do Fry Pans, Butcher Knives, Knives & Forks, Tin Plate, Sheet Lead. Galvanized Water Pipe, 1 to 2 in. WHITE LEAD, various qualities;

CORRUGATED ROOFING. 24 Gauge, 6, 7, 8 and 9 ft. Lengths; Galv. Screws and Washers, Galv. Ridging. Yellow Sheathing Metal, and Nails Annealed Fence Wire, Fence Staples, Wire Plant Guards and Arches,

BOILED OIL, TURPENTINE

STEEL RAILS. With Fish Plates, Bolts and Spike

Portland Cement, Fire Clay, Fire Bricks, Both Square and arch; Lump Rock Salt, Fishery Salt, English Belting,

AN ASSORTMENT OF **ENGLISH GROCERIES**

rshire Sauce, Fruits, Janus, Cream Tartar Soda, Spines, Etc., Etc., Etc. We have also just received an asst. of 1

AMERICAN GOODS Bleached & Brown Cottons

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Shelf HARDWARE Crockery and Glassware, Oos, Picks, Shovel Plantation and Mechanics' Tools Portable Engines

ONE SPLENDID PIANO, Tested Chain. re's Soap, two qualities, in boxes of 21 Bar and 60 Bars; Best Welsh Steam Coal

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